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**C O M M I S S I O N**

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*1994 Annual Report to the Governor  
and the General Assembly of Virginia*

# VIRGINIA HOUSING STUDY COMMISSION

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## General Assembly of Virginia

**The Honorable Alan A. Diamonstein**

Chairman

Virginia House of Delegates

94th Legislative District

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**The Honorable Charles L. Waddell**  
33rd Legislative District

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**The Honorable Stanley C. Walker**

6th Legislative District

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**The Honorable James F. Almand**

Virginia House of Delegates

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**Mr. Walter J. Parker**

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*Leesburg*

**Nancy M. Ambler, Esquire**

*Richmond*

**The Honorable Jackie T. Stump**

Virginia House of Delegates

3rd Legislative District

*Oakwood*

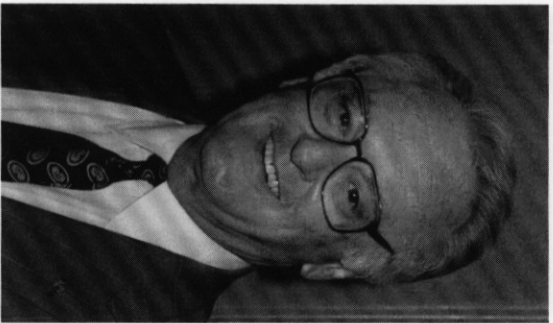


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# INTRODUCTION



COMMISSION CHAIRMAN  
ALAN A. DIAMONSTEIN

## BACKGROUND

Established by the 1970 Virginia General Assembly, the Virginia Housing Study Commission was originally mandated "to study the ways and means best designed to utilize existing resources and to develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission was further directed to determine if Virginia laws "are adequate to meet the present and future needs of all income levels" in Virginia, and to recommend appropriate legislation to ensure that such needs are met.

The Commission is comprised of eleven members, including five members of the Virginia House of Delegates, three members of the Virginia State Senate, and three gubernatorial appointees. Delegate Alan A. Diamonstein of Newport News has served as the Commission's Chairman since soon after its establishment.

Increasingly, the Commission has come to be recognized as a forum for new ideas in Virginia housing, and as a focal point for helping to develop consensus for such ideas. Nationally, the Commission is one of only a few such bodies that work closely with the public and private sectors and nonprofit organizations to develop workable solutions to housing problems, and advocate within state government for their implementation.

From 1971 throughout the mid-1980s, the Commission introduced numerous pieces of legislation, subsequently passed by the Virginia General Assembly, to further its goal of ensuring safe, decent affordable housing for every Virginian. Commission accomplishments during that time period include:

- the establishment of a state office of housing, now the Division of Housing of the Virginia Department of Housing and Community Development
- the establishment of the Virginia Housing Development Authority
- the Uniform Statewide Building Code
- the Virginia Residential Landlord and Tenant Act
- the Virginia Condominium Act
- the Virginia Real Estate Cooperative Act.

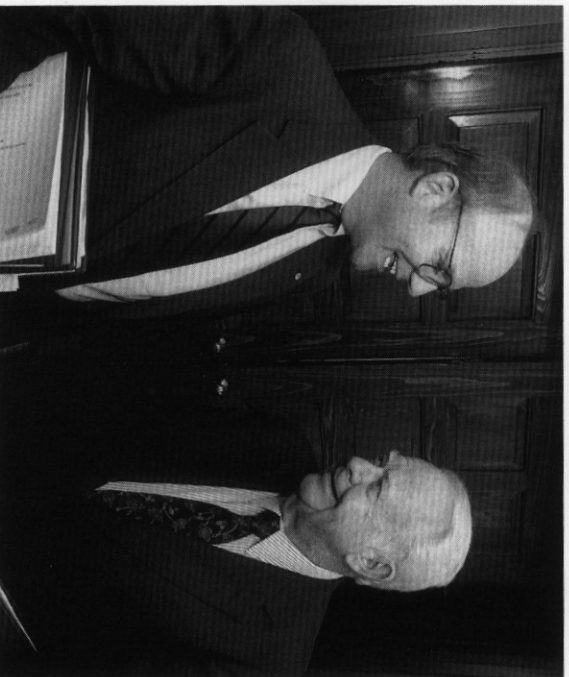
In 1987, the Commission proposed the creation and capitalization of the landmark Virginia Housing Partnership Fund. In 1988, at the Commission's recommendation, the General Assembly established the Fund and increased state allocations for housing programs from \$400,000 to \$47.5 million for the 1989-90 biennium. Other successful 1987-88 recommendations include the establishment of a Virginia income tax voluntary contribution program for housing programs, the Virginia Housing Foundation (now the Virginia Community Development Corporation), and the annual Governor's Conference on Housing.

Commission recommendations embraced by the 1989 General Assembly include: a state low-income housing tax credit program; state authorization of such flexible zoning techniques as planned unit developments, mixed unit developments, and density bonuses; and exemption of nonprofit housing organizations from tangible personal property tax on materials purchased for the development of affordable housing.

In 1990, the General Assembly approved additional Commission initiatives, including: a \$3.0 million program to provide indoor plumbing for rural Virginians; a tax credit program for landlords providing rent discounts to low-income elderly or disabled tenants; a legislative mandate that localities study affordable housing in preparing their comprehensive plans; and legislation requiring localities to provide for the placement of double-wide manufactured housing in districts zoned primarily for agricultural purposes.

Commission recommendations passed by the 1991 General Assembly include: amendments to the Virginia Fair Housing law to ensure that Virginia law is substantially equivalent to federal law; amendments to the Virginia Residential Landlord and Tenant Act reducing the exemption for single family rental housing from ten to four units held by owners of such property (and thereby ensuring that some sixty percent of such rental units in the state are covered by the Act); and establishment of a Virginia Manufactured Housing Licensing and Transaction Recovery Fund.

The 1992 General Assembly approved the following Commission recommendations: comprehensive consumer protection language in the Virginia Mobile Home Lot Rental Act; a one-time right of redemption of tenancy prior to an action for eviction or unlawful detainer; expansion of the Virginia tax credits program, fostering rent discounts to low-income elderly or disabled tenants, to include single family units; and restoration of the Virginia Housing Partnership Fund to the Virginia General Fund Budget.



COMMISSION MEMBERS JAMES F. ALMAND (LEFT)  
AND STANLEY C. WALKER

*The 1994 Virginia General Assembly  
approved Commission recommendations  
focusing on homeless prevention, blighted  
and deteriorated housing, affordable  
dwelling unit ordinances, manufactured  
housing, and VHDA alternative bond  
financing methods.*

In 1993, the General Assembly approved comprehensive Commission recommendations related to the operation and management of condominium, cooperative, and property owners' associations. The Assembly also approved the Commission's landmark legislation designed to assert the responsibility of localities to consider the affordable housing needs of a more broadly defined community, as well as its recommendations to extend the innovative state tax check-off for housing and rent reduction tax credit programs.

In its 1994 Sessions, the General Assembly approved these Commission recommendations in the area of homeless prevention: banning self-help evictions in the case of all residential leases, and allocating additional funding for the Virginia Homeless Intervention Program, originally a Commission initiative, to ensure service to additional households needing temporary assistance to prevent homelessness.

In the area of blighted housing, the Assembly approved Commission recommendations which authorize localities to: acquire and rehabilitate or clear individual properties which constitute "spot blight" in a community; require the issuance of certificates of compliance with current building regulations after inspections of residential buildings, located in conservation and rehabilitation districts, where rental tenancy changes or rental property is sold; and control the growth of grass and weeds on vacant property as well as property on which buildings are located.

The 1994 General Assembly also approved the following Commission recommendations: authorization for all Virginia localities to develop affordable dwelling unit (ADU) ordinances; authorization for VHDA to enter into such alternative bond financing methods as "swap agreements" whereby VHDA may issue adjustable rate mortgage loans; and legislation to ensure efficient and effective administration of the Manufactured Housing Licensing and Transaction Recovery Fund Law.

## **1994 WORK PROGRAM**

The Commission in 1994 focused on the following broad areas of study: rental housing issues; blighted and deteriorated housing; and miscellaneous housing finance issues, including housing density bonuses for transit projects, limited priority liens and nonjudicial foreclosure sales pursuant to condominium and property owners associations, home equity lending practices, and water/sewer connection fees. As in previous years, the Chairman appointed Subcommittees comprised of a cross section of housing advocates to share with the Commission their insight and expertise on designated study issues. To gather testimony on those issues, the Commission convened regional public hearings, and an informational forum in southwest Virginia, attended by hundreds of Virginia citizens. Then, joined by its Subcommittees and the Boards and key staff of DHCD and VHDA, the Commission convened its annual legislative work session. After reviewing testimony from public hearings, issue papers, and Subcommittee recommendations, the Commission reached consensus on the recommendations published in this report.



Also in 1994, together with DHCD and VHDA, the Virginia Housing Study Commission sponsored the seventh annual Governor's Conference on Housing. With over 700 attendees, the Conference, chaired by Delegate Diamonstein, is the largest statewide housing-related gathering regularly held in the nation. Together with DHCD, VHDA, and LIISC (Local Initiatives Support Corporation), the Commission sponsored a multi-day "summit" of Virginia nonprofit housing organizations. In addition to legislative and conference activities, the Commission responded to hundreds of inquiries regarding housing issues, and its Chairman and Executive Director drafted the Residential Leases chapter of the Virginia Law Foundation 1994 handbook of Landlord-Tenant Law and Practice in Virginia. The Commission also participated in implementing Virginia's Comprehensive Housing Affordability Strategy (CHAS), and its Executive Director met regularly with the boards and key staff of DHCD, VHDA, the Virginia Community Development Corporation, the Virginia Interagency Action Council for the Homeless, and the Virginia Housing Coalition, as well as housing advocates, government officials, and industry officials around the Commonwealth.

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*The Commission expresses sincere gratitude and appreciation to all who have contributed to its work, particularly Commission Subcommittee members; participants in Commission public hearings, its southwest Virginia forum, the "summit" of nonprofit housing organizations, and the Governor's Conference on Housing; Mr. David L. Caprara, DHCD Director; Mr. Paul J. Graszewicz, former Associate Director of DHCD; Mr. Stephen C. Calhoun and Dr. William J. Ernst, DHCD policy analysts; Dr. C. Theodore Koebel, Director of the Virginia Center for Housing Research; and others from across the Commonwealth who have actively assisted the Commission.*

# EXECUTIVE SUMMARY

## Following is a brief summary of Virginia Housing Study Commission recommendations

to the Governor and 1995 General  
Assembly of Virginia.

The Commission in 1994 focused  
on three broad areas of study: rental  
housing issues; blighted and deteriorated  
housing; and housing finance issues.

## RENTAL HOUSING ISSUES

**HOUSE JOINT RESOLUTION 241** (Health and Safety Issues Related to Certain Residential Rental Tenancies) requests the Commission to study health and safety issues of residential rental property not covered by the Virginia Residential Landlord and Tenant Act (VRLTA). The Act currently covers some 65 percent of the state's rental housing units, with the result that landlords and tenants alike are faced with a dual system of case law and statutory law that is complex and confusing. The following Commission recommendations are designed to extend critical health and safety protections to all Virginia tenants.

### Limited Mandatory Enforcement of the Building Maintenance Code

Although all Virginia localities are authorized to enforce Volume II (the Building Maintenance Code) of the Uniform Statewide Building Code, only about 40 of 300 choose to do so. The Commission recommends authorizing local building officials to enforce Volume II upon finding a serious threat to health and safety following a complaint by a tenant of a residential rental unit that is the subject of such complaint.

### Providing for Injunctive Relief

The Commission recommends clarifying sections of the *Code of Virginia* to provide for injunctive relief, e.g., ordering a building owner to remedy a situation by way of repairs, in cases of building code violations.

### Lead-Based Paint Hazard Reduction Act of 1992

The Commission will monitor implementation of this federal legislation, which takes effect in 1995 and requires all sellers and lessors of single family homes to disclose known lead-based paint hazards to purchasers or lessees of such units.

### Avenues of Recourse Pursuant to Certain Building Code Violations

Several avenues of recourse are available to tenants residing in rental housing units plagued by serious threats to health and safety. Such tenants could:

- Request that the local Commonwealth Attorney bring criminal charges against the owner on grounds of violating Volume II of the Uniform Statewide Building Code
- Initiate proceedings against the owner under nuisance law
- Request that the local building official enforce Volume II (where applicable)
- Initiate proceedings against the owner under the VRLTA (where applicable).



COMMISSION MEMBER F. GARY GARCZYNSKI

## **HOUSE JOINT RESOLUTION 251** (Inspection of Rental Properties Between Tenancies) requests

the Housing Study Commission to "study the need for legislation to authorize local governments to inspect [residential] rental properties between tenancies to ensure compliance with applicable state codes and their enforcement authority when violations are found." Code enforcement has become an increasingly important public policy concern in the Commonwealth, particularly in older central cities where much of the future stock of affordable rental housing already is in place. However, a number of concerns have been raised regarding proposals to implement locality-wide inspections between tenancies or following change of ownership of residential rental properties.

The 1994 Virginia General Assembly enacted House Bill 1238, recommended by the Housing Study Commission, authorizing localities, after making an affirmative finding of the need to protect public health, safety, and welfare, to conduct inspections between tenancies and issue certificates of compliance for existing residential structures located within conservation and rehabilitation districts designated by the local government. The Commission recommends the implementation of programs permitted under HB 1238 to determine the effectiveness of such inspections before extending such authority locality-wide. The Commission is also of the opinion that its recommendations pursuant to HJR 241 (health and safety issues relating to certain residential tenancies) also relate to HJR 251 and should prove helpful in matters of tenant health and safety, as well as overall neighborhood stability and revitalization.

## **HOUSE BILL 501** (Removal Bonds) was carried over to the 1995 General Assembly Session for further study by the Housing Study Commission at the request of the patron. To remove an eviction or unlawful detainer action from general district to circuit court, or to appeal an order for the same, Virginia tenants currently are required by law to file a bond of up to twelve months' future rent and three months' future damages. Low- and moderate-income tenants are often unable to meet the current applicable bond payment requirements, and so their right to appeal an eviction is effectively denied.

The Commission recommends providing tenants more flexibility to remove to circuit court residential detainer actions not involving a default in rent. To ensure that landlords' interests also are protected, the Commission recommends stipulating in HB 501 that, where tenants fail to abide by the terms of a filed formal legal agreement pursuant to the removal action, the court would be mandated to dismiss the case and grant immediate possession of the premises to the landlord. Such agreement would stipulate a tenant's undertaking to pay rent as set forth in the rental agreement.

**HOUSE BILL 1381** ("Terrorized Tenants"), a 1993 Housing Study Commission recommendation, was introduced in the 1994 Session and carried over for further study by the Commission at the request of the patron. The bill is a response to certain tenants' stated concerns for their health, safety, and welfare, and that of their children, resulting from serious drug-related or violent criminal activity occurring on the premises of their multifamily housing developments.



The Commission recommends streamlined and more direct successor legislation to HB 1381. The successor bill would amend Virginia *Code* § 55-248.31 of the VRLTA and provide that in circumstances where a breach of the tenant's obligations under the VRLTA or the rental agreement involves or constitutes a criminal or willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises within fifteen calendar days from the date of service of process on the tenant.

The Commission encourages tenants facing health and safety issues due to violent or drug-related criminal activity on their premises to notify their landlord of the same and work with him and law enforcement officers to take back their neighborhoods from criminals. In cases where landlords do not take reasonable steps to address such activity on their premises following notification regarding the same, affected tenants may escrow their rent under *Code* § 55-248.27 of the VRLTA.

## **BLIGHTED AND DETERIORATED HOUSING**

**HOUSE JOINT RESOLUTION 489** (Blighted and Deteriorated Housing) requests the Housing Study Commission to study and recommend remedies to address the problems associated with blighted and deteriorated properties. Such structures and lots impair or arrest neighborhood development and revitalization, sometimes leading to an actual exodus of residents and businesses, and spreading blight to neighboring properties and communities.

The Commission recommended landmark legislation, passed by the 1994 General Assembly, based on its 1993 HJR 489 study. Such legislation addresses spot blight, lienors' claims pursuant to tax sales, local control of grass and weeds, and local inspection of certain residential rental properties. In its second year of the HJR 489 study, the Commission recommends the following:

### **Clarification of Initiation of a Tax-Delinquent Property Sale**

Section 58.1-3965 of the Virginia *Code* specifies that notice of a tax-delinquent property sale is to be sent to the property owner "at least thirty days prior to instituting any action" pursuant to selling the property. Several localities have indicated that some property owners receive this "advanced" notice and pay a portion of their delinquent tax to prevent the locality from proceeding with the sale. Such payment results in properties remaining at least two to three years tax delinquent indefinitely.

The Commission recommends clarifying that the owner may be allowed to terminate a tax sale prior to the date of such sale by entering into a written agreement with the locality to pay all accumulated taxes, penalties, interest, and costs. Such agreement would constitute an installment note which would be recorded as a third lien on the subject property.



*The Commission recommends authorizing all Virginia localities to implement "homesteading" programs, the modern analogue to the original Homesteading Act of 1862.*

#### **Registration of Landlords or Their Resident Agents**

Localities have advised the Commission that some absentee landlords who fail to maintain properties, thus allowing their slide into decay and deterioration, use post office box addresses to avoid providing an identifiable street address for purposes of service of process. The Commission recommends requiring that Virginia taxation records for real property include a registration of the property owner and such owner's identifiable street address.

#### **Property Tax Liens on Blighted and Deteriorated Structures**

Because tax liens on abandoned or deteriorated property may approach or exceed the assessed or fair market value of the property, potential purchasers—who become responsible for such liens on purchase of the property—may in turn be discouraged from investing in such real estate. The Commission recommends authorizing localities to issue local tax credits pursuant to programs such localities may adopt to ameliorate the above-discussed property tax lien situation.

#### **Urban Homesteading Programs**

Urban homesteading programs, under which private citizens take temporary possession of abandoned structures owned by a locality and then acquire title for a nominal fee following their making of improvements, can serve as an important strategy to revitalize blighted and deteriorated neighborhoods. Currently, § 36-19 of the *Code* authorizes only localities with a redevelopment and housing authority to implement such homesteading programs and other "experiments" in housing. The Commission recommends amending § 36-19 of the *Code of Virginia* to enable all localities in the Commonwealth to initiate such homesteading programs. The Commission also recommends that funding for such programs be made available through the Virginia Housing Partnership Fund as well as the Virginia Housing Development Authority Virginia Housing Fund.

#### **Local Control of Graffiti and Property Defacement**

Although vandalism of a single property or structure can have a significant negative economic and environmental impact on an entire neighborhood, localities are limited in their ability to address directly the often long-term impact of existing graffiti and defaced property. The Commission recommends authorizing local governments to continue to remove graffiti on private property at public expense where the locality has secured the written permission of the property owner to undertake the same. In situations where the locality has been unable to obtain written consent, the Commission recommends authorizing localities to proceed to seek permission to remove graffiti on the grounds that it is a public nuisance, and to remove the graffiti at public expense after securing permission through the judicial process.

## HOUSING FINANCE ISSUES

**SENATE BILL 97** (Housing Density Bonuses for Transit Projects) would authorize localities to provide affordable housing density bonuses for public transit projects. The bill was carried over to the 1995 General Assembly Session and re-referred to the Housing Study Commission for further study prior to the Session. The Commission recommends a Substitute to SB 97, which bill would amend § 15.1-491.2 of the Virginia *Code* to provide that a developer, on his own initiative, could proffer a cost contribution, dedication of real or personal property, and construction of improvements in furtherance of transportation services and facilities, in areas designated in a local comprehensive plan as eligible for density increases, provided that the governing body grants the owner an additional increase in density to which the owner agrees.

**SENATE BILLS 266 AND 267** (Limited Priority Liens and Nonjudicial Foreclosures) were carried over to the 1995 General Assembly Session with the request that the Commission work with parties interested in the bills prior to such Session. The bills would grant a lien priority for unpaid assessments of condominium unit and property owners associations during the six months immediately preceding the perfection of the lien. Further, the bills would set forth procedure to provide for nonjudicial foreclosure of an assessment lien. Representatives of condominium unit and property owners associations and representatives of the lending industry agreed at Commission meetings to work together to address the nonjudicial foreclosure provisions of the bills. However, there remain a number of lending industry concerns regarding limited priority liens.

**HOME EQUITY LENDING PRACTICES** in the Commonwealth may, in the case of "high cost mortgages," adversely affect low-income homeowners. The Housing Study Commission has been advised that, as Virginia's banking laws generally place no restrictions on mortgage interest rates, some owners have suffered foreclosures after refinancing their homes, in conjunction with home repairs, at usurious rates.

The Community Development Banking Act (H. R. 3474), passed by Congress in August 1994 and forwarded to the White House for the President's signature, is designed to protect consumers who incur debt secured by their home. The Act specifically addresses high cost mortgages, defined as consumer credit transactions, other than residential mortgage transactions, secured by a consumer's principal dwelling. Such mortgages must meet one of these conditions:

- the annual percentage rate exceeds by more than 10 percentage points the rate of interest on one-year U. S. Treasury obligations, or
- points and fees payable by the consumer at or before closing exceed the greater of 8 percent of the amount financed, minus fees and points, or \$400.00.

*The Commission recommends mandating that water/sewer connection fees include only the actual costs of installing the connection to the system, the allocable costs of administration for the installation, and the allocable capital costs of providing service to the new user.*

The Act would allow borrowers to rescind any agreement consummated under unfair, deceptive, or evasive acts, including those in which a lender "takes advantage of the borrower's infirmities, lack of education or sophistication, or language skills, necessary to understand fully the terms of the transaction."

A 1994 Housing Study Commission Subcommittee meeting to address the issue of usurious home equity lending rates initially considered proposing legislation which would amend the Virginia Mortgage Lender and Broker Act to include provisions, relating to high cost mortgages, found in proposed federal H. R. 3474. However, Subcommittee members and subsequently the Commission agreed that national legislation would be preferable to legislation enacted in Virginia and that the effect of the federal legislation would be monitored through the State Corporation Commission and reported to the Commission.

**WATER AND SEWER CONNECTION FEES** set by some Virginia localities may not necessarily adequately relate to rates allowed under state law. Although local governments and authorities are authorized to fix, charge, and collect fees for water and sewer services, state laws governing these charges are vague and offer little guidance to local governments in establishing such fees and charges. The Commission is of the opinion that water and sewer connection fees established by any county, city, town, authority, or sanitary district must be fair and reasonable and bear a substantial relationship to the allowable costs of providing the individual service. Accordingly, the Commission recommends amending appropriate sections of Title 15.1 of the Virginia Code §§ 21-118.4(e) and 21.118.5 to provide more direction in establishing rates, fees, and charges for connection services.

Specifically, such legislation would mandate that connection fees include only the actual costs of installing the connection to the system, the allocable costs of administration for the installation, and the allocable capital costs of providing service to the new user. Further, local governments would be required to review water and sewer connection fees at least every three years and make adjustments, if necessary, to assure that fees to new users are fair and reasonable.

**SUBDIVISION STREET STANDARDS** promulgated by the Virginia Department of Transportation (VDOT) may be excessive and effectively serve as a regulatory barrier to affordable housing. The Commission and the Department of Housing and Community Development are currently working together to foster the development of appropriate legislation and/or administrative remedies, to be recommended and introduced in early 1995, to ensure that VDOT standards are not overly prescriptive.

**HOUSE JOINT RESOLUTION 192** (Regulatory Barriers to Affordable Housing) requests the Secretary of Commerce and Trade to review regulatory barriers to affordable housing, and to submit the results of such study to the Housing Study Commission for review and comment. The Secretary's Report submitted to the Commission includes a number of important recommendations of interest to affordable housing advocates, and legislation will likely be forthcoming on several related issues, including: amending



Virginia Code § 15.1-430 to provide a uniform definition of "affordable housing" and amending House Bill 1235 relating to the Virginia Housing Development Authority "60-day letter" to ensure that localities do not arbitrarily and capriciously reject multifamily housing projects financed by VHDA. The Commission commends the Report, available through DHCD, for review, and further recommends that an HJR 192 implementation team be appointed to monitor progress made in implementing recommendations therein.

**A SURVEY OF NONPROFIT HOUSING ORGANIZATIONS** in the Commonwealth was recently conducted at the request of the Housing Study Commission by the Virginia Center for Housing Research at Virginia Tech. The survey was undertaken to gather basic data, to be used in developing state housing policy recommendations, about such organizations. Although the growth and importance of nonprofit housing organizations are well recognized, prior to the study little information had been assembled on their characteristics, their accomplishments, and the challenges they face in achieving their mission. The Commission commends the survey results, available through the Center, for review.



COMMISSION MEMBERS WILLIAM C. MIMS (LEFT)  
AND CLINTON MILLER

# RENTAL HOUSING ISSUES

**C**ommission recommendations relating to HJR 241 are designed to extend critical health and safety protections to all Virginia tenants.

## HOUSE JOINT RESOLUTION 241 Health and Safety Issues Related to Certain Residential Rental Tenancies

House Joint Resolution 241, patroned by Delegate James F. Almand, requests the Virginia Housing Study Commission to study health and safety issues of residential rental property not covered by the Virginia Residential Landlord and Tenant Act (VRLTA). The VRLTA (§ 55-217 et seq. of the *Code of Virginia*) currently applies to all multifamily rental units and those single family rental units whose owner owns more than ten such units or, in the case of most urban areas (all cities and the counties of Arlington and Fairfax), whose owner owns more than four such units. Reasonable estimates based on 1990 U. S. Census data suggest that as many as 35 percent of the state's rental units are not covered by the VRLTA.

Virginia landlord and tenant law, then, is a dual system often complex and confusing. The Commonwealth currently provides one system based on clearly defined rights and obligations of all parties to a rental agreement under the Act, and one based on often ambiguous rental agreements outside the purview of the Act and the courts' interpretations of those agreements. Furthermore, although one of the original intents of the exemption of certain single family units from the Act was to protect small property owners from additional rules and requirements of a state landlord and tenant law, problems experienced in many rental dwellings throughout the Commonwealth indicate there is a need to assure that the benefits of critical health and safety provisions of the Act are extended to all residential tenants.

Because Virginia's general landlord and tenant law applicable to all rental agreements does not address health and safety matters, problems with substandard housing and unsafe conditions in rental units are often not addressed. Most leases for property that are not covered by the Act do not contain provisions specifying that the landlord has a "duty to repair" any problems with the rental unit. The tenants' options in many cases are either to endure such conditions as faulty plumbing, exposed electrical wires, open holes in walls and ceilings, rotting floors, lack of water, and lack of heat, or to terminate the lease and try to locate alternative housing. Given the limited affordable rental housing market of many communities in the Commonwealth, this latter option may prove difficult and, because of security deposit requirements, impossible for some low-income households.

Following are Housing Study Commission recommendations designed to extend critical health and safety protections to all Virginia tenants.



COMMISSION MEMBER TRACEY S. DEBOISSIERE

## Limited Mandatory Enforcement of the Building Maintenance Code

Local governments in the Commonwealth currently are authorized to adopt and enforce Volume II (the "Building Maintenance Code") of the Uniform Statewide Building Code. Volume II requires that all existing buildings and structures be properly maintained to protect the occupants from health and safety hazards that might arise from improper or inadequate building maintenance.

The Building Maintenance Code purposes are congruent with the Landlord and Tenant Act's requirements for landlords to maintain fit premises (Virginia Code § 55-248.13) and to provide heat, running water, hot water, electricity, gas, or other essential services (Virginia Code § 55-248.23). The Maintenance Code seeks to assure that property is maintained in a clean, habitable, and structurally safe condition, and requires that all electrical, heating, plumbing, and sanitary facilities be maintained in good working order.

A recent Department of Housing and Community Development study indicates that only about 40 of more than 300 Virginia local governments now choose to enforce Volume II. The Housing Study Commission is of the opinion that local participation in the administration of the Building Maintenance Code could be encouraged if the workload of local building officials were limited to enforcement of the same in the following limited and specific areas: plumbing, electrical, heating, and fire prevention (smoke detectors), and structural integrity (rotting roofs or floors, and exit requirements). The Commission further believes that it is important to authorize local building officials to take action upon finding a serious threat to life and safety.

Therefore, the Commission recommends that local building officials be authorized to enforce Volume II of the Uniform Statewide Building Code in the above-named circumstances following a complaint by a tenant of a residential rental unit that is the subject of such complaint.

## Providing for Injunctive Relief

A 1986 Attorney General's opinion concludes that injunctive relief—ordering a building owner to remedy a situation by way of repairs, for example—may be sought to abate a building code violation. Such opinion references *Code of Virginia* § 8.01-620, which states: "Every circuit court shall have jurisdiction to award injunctions, whether the judgment or proceeding enjoined be in or out of the circuit, or the party against whose proceedings the injunction be asked resides in or out of the circuit."

However, the Commission is of the opinion and recommends that the *Code* should be amended to clarify that injunctive relief is indeed available and may be awarded by the circuit court where building code violations occur.





COMMISSION MEMBER ROBERT L. CALHOUN

## **Lead-Based Paint Hazard Reduction Act of 1992**

The Commission noted that the Lead-Based Paint Hazard Reduction Act of 1992 (43 USC 4852), which takes effect in 1995, requires all sellers and lessors of single family homes to disclose known lead-based paint hazards to purchasers or lessees of such housing units. Further, sellers and landlords are required under the Act to provide purchasers or lessees an information pamphlet prior to closing explaining hazards associated with lead-based paint. The Commission will monitor the implementation of the Act in Virginia, and may further recommend requiring disclosure, as well, of known asbestos hazards.

## **Avenues of Recourse Pursuant to Certain Building Code Violations**

In cases where there is a serious threat to the health or safety of a residential tenant, there are several avenues for recourse available to such tenant. The tenant could request that the local Commonwealth Attorney bring criminal action against the property owner for such owner's failure to follow state law, specifically, Volume II of the Building Maintenance Code. The tenant could also personally initiate proceedings against the owner under a nuisance statute and seek injunctive relief, perhaps in the form of repairs. In addition, the tenant could request that the local building official take action to enforce Volume II. Such request would also be the appropriate course of action in cases involving asbestos hazards. (As previously discussed, a building official in a locality that enforces Volume II could bring such action currently. However, an official in a locality that chooses not to enforce Volume II would be unable to bring such action unless the Commission recommendation on point were adopted as state law.) Further, if the health or safety threat involves lead-based paint, the tenant may have a cause of action under the aforementioned Lead-Based Paint Hazard Reduction Act.

Tenants covered under the Virginia Residential Landlord and Tenant Act also may have a direct cause of action under the Act, which requires a landlord "to comply with the requirements of applicable building and housing codes materially affecting health and safety." The Act further requires the landlord "to make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition."

## **HOUSE JOINT RESOLUTION 251** **Inspection of Rental Properties Between Tenancies**

House Joint Resolution 251, patroned by Delegate Harry J. Parrish, requests the Virginia Housing Study Commission to "study the need for legislation to authorize local governments to inspect [residential] rental properties between tenancies to ensure compliance with applicable state codes and their enforcement authority when violations are found." Code enforcement has been an important component of local efforts to preserve the supply of safe, decent, and affordable rental housing. It has also become a

significant public policy concern in a number of Virginia communities, particularly in older central cities where the bulk of the affordable rental units for the future are precisely those already in place.

As discussed in the previous section of this report, local government approaches to inspecting rental residential property vary. Volume II—the Building Maintenance Code—of the Uniform Statewide Building Code (USBC) permits, but does not require, localities to inspect properties for compliance with code provisions. Only about 40 of some 300 Virginia localities choose to enforce Volume II. Many enforce its provisions on a complaint basis; still others have undertaken more aggressive or proactive programs that include the periodic inspection of residential units between tenancies in part or all of the locality.

The statute authorizing enforcement programs for building safety, § 36-105 of the *Code of Virginia*, permits localities to “inspect and enforce the building regulations promulgated by the Board [of Housing and Community Development] for existing structures . . . .” The USBC currently provides localities with the authority to conduct inspections to assure compliance with building regulations for existing structures. A 1986 opinion of the Attorney General explained the scope of this authority, and noted that a locality could not “implement a policy requiring a new occupancy permit for vacated buildings. . . [unless] those vacated buildings will be changed in use, or if the owner (or his agent) requests such a permit in writing.” For several years, however, some urban and suburban jurisdictions have required inspections of residential rental properties upon a change in the tenancy or ownership of a rental property. In such cases a new occupancy certificate was issued. The 1994 Virginia General Assembly enacted House Bill 1238, recommended by the Housing Study Commission, authorizing localities, after making an affirmative finding of the need to protect public health, safety, and welfare, to conduct inspections between tenancies and issue certificates of compliance for existing residential structures located within conservation and rehabilitation districts designated by the local government.

The Commission legislation was introduced at the request of localities to provide them requisite authority to implement code compliance programs in neighborhoods with particularly negative instances of code compliance by some building owners. Although some localities have requested authority to conduct such compliance programs in all neighborhoods, there are concerns regarding such enhanced authority. For example, property owners have expressed concerns that local government delays in the inspection and certification process could prolong the period in which a rental unit is off the market between tenancies, thereby reducing the income stream from the unit.

Advocates for lower income tenants have also expressed apprehension that enhanced code enforcement may displace such tenants from the only affordable units available to them. They fear that, in an overzealous approach, more units may be condemned, and other units may have to be vacated at least temporarily to undergo repairs. Further, there are concerns that some owners may simply abandon their property, walking away from their responsibilities, and others may implement rent increases necessitated to meet the additional expenses of complying with code provisions, thus effectively rendering a unit unaffordable.



*The Commission recommends providing tenants more flexibility in removing to circuit court residential detainer actions not involving a default in rent.*

Obtaining notice of the termination of a tenancy is another potential problem. Some localities have obtained from electric power or gas distribution utilities lists of disconnections and reconnections, despite the fact that neither type of utility is obligated to provide this information and may not do so. Local water and sewer utilities, if they are governmental enterprises, may be a more accessible source, but not every locality is served by a publicly controlled utility.

Finally, broad-based inspection programs challenge the administrative capacity of local governments. To be effective, code enforcement programs must commit resources sufficient to the task at hand. Central cities, in particular, could be hard pressed to obtain adequate staffing for comprehensive timely, city-wide programs despite the possible use of modest fees to underwrite them.

Given the stated concerns, the Commission is of the opinion that it would be prudent to allow localities to use their new authority promulgated through House Bill 1238 for inspections in areas with the worst building conditions (conservation and rehabilitation districts) for a period of time to determine the effectiveness of such inspections before extending such authority locality-wide. The Commission is also of the opinion that its recommendations contained in this report pursuant to HJR 241 (health and safety issues relating to certain residential tenancies) also relate to HJR 251 and should prove helpful in matters of tenant health and safety, as well as overall neighborhood stability and revitalization.

## **HOUSE BILL 501**

### **Removal Bonds**

House Bill 501, patroned by Delegate James F. Almand, was carried over to the 1995 General Assembly Session for further study at the request of the patron. Current Virginia law allows tenants to appeal a court order, pursuant to an action for eviction or unlawful detainer, rendered by a general district court. To remove a case from general district to circuit court, or to appeal an order for eviction or unlawful detainer, tenants are required by law to file a bond of up to twelve months' future rent and three months' future damages.

Low- and moderate-income tenants are often unable to meet the current applicable bond payment requirements, and so their right to appeal an eviction is effectively denied. Moreover, because jury trials are not available in general district court, Virginia requirements effectively deny less affluent tenants the fundamental right to a trial by a jury of their peers on an issue as important as whether they may stay in their homes.

Of the eighteen states that currently require similar future payment security requirements to appeal or remove eviction actions, Virginia's requirements are among the harshest. Both North Carolina and South Carolina recently have enacted legislation allowing appeals to be based on a tenant's undertaking to pay rent when due. Officials in these states report no adverse effects on court caseloads from frivolous appellate filings due to the enactment of the appeal bond reform.



COMMISSION MEMBER JACKIE T. STUMP

The Housing Study Commission recommends legislation that would provide tenants more flexibility to remove to circuit court residential detainer actions not involving a default in rent. To ensure that landlords' interests also are protected, the bill would stipulate that, where tenants fail to abide by the terms of a filed formal legal agreement pursuant to the removal action, the court would be mandated to dismiss the case and grant immediate possession of the premises to the landlord.

Removal of actions under the proposed amendment to Virginia Code § 8.01-127 would be conditional upon the defendant (i) filing an affidavit of substantial defense and (ii) paying the costs accrued to the time of removal, the writ tax as fixed by law, and the costs in the court to which it is removed. If the defendant failed to pay rent at such time and in such manner as required by the rental agreement, the landlord could then file an affidavit with the circuit court stating the same. If, within three business days of service of such notice, the defendant failed to file an affidavit stating that the rent in question had been timely paid, the circuit court would then be mandated to enter an order of immediate possession on behalf of the landlord. If an affidavit were filed stating the rent had been timely paid, the matter would come before the circuit court forthwith for resolution.

## HOUSE BILL 1381

### "Terrorized Tenants"

House Bill 1381, a 1993 Housing Study Commission recommendation, was introduced in the 1994 Session and carried over for further study by the Commission at the request of Delegate Flora D. Crittenden, chief patron. The bill is a response to some tenants' stated concerns for their health, safety, and welfare, and that of their children, resulting from serious drug-related or violent criminal activity occurring on the premises of their rental units. House Bill 1381, then, is designed to abate serious drug-related or violent criminal activity in some single family and all multifamily housing developments.

The Commission recommends streamlined and more direct successor legislation to House Bill 1381, which successor bill would amend the immediate nonremediable termination provision pursuant to threats to health and safety under Virginia Code § 55-248.31 of the Virginia Residential Landlord and Tenant Act and make available to landlords an expedited eviction procedure in such immediate nonremediable situations. The new legislation would provide that in circumstances where a breach of the tenant's obligations under the VRLTA or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises.

Specifically, the legislation would require that the initial hearing on the landlord's action for immediate possession be held within fifteen calendar days from the date of service of process on the tenant, except that the Court must order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants of the landlord's

premises. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the Court, to the extent practical, must order that the matter be given priority on its docket and such subsequent hearing or contested trial must be heard no later than thirty days from the date of service of process on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the Court shall have such authority as is necessary to afford any further remedy or relief that will protect the interests of a party to the proceeding or the interests of any other tenant residing on the landlord's premises.

The Commission also seeks to ensure that tenants terrorized by other tenants are empowered to take steps to help make safe their homes and neighborhoods. The Commission has been advised that excellent and appropriate avenues currently exist under the VRLTA for tenants to place the landlord on notice of a potential problem existing on the property, which notice will then require the landlord to take reasonable steps to address the problem or be faced with the potential legal consequences. Courts, under the theory of premises liability, are now holding landlords responsible for foreseeable third party acts that occur on the property, where the landlord failed to take reasonable steps to address a problematic situation involving health and safety of which he was aware or reasonably should have been aware.

The Commission encourages tenants facing health and safety issues due to violent or drug-related criminal activity on their premises to notify their landlord of the same and work with him and law enforcement officers to take back their neighborhoods from criminals. The Commission has been advised that, in cases where landlords do not take reasonable steps to address violent and drug-related activity on their premises following notification regarding the same, affected tenants may escrow their rent, under *Code* § 55-248.27 of the VRLTA, as an additional response and attempt to work cooperatively toward safer homes and neighborhoods. Training for tenants regarding the rent escrow provision and other rights and responsibilities they incur under the VRLTA may be an important component in their goals of assuring neighborhood safety and stability.

The Commission will continue to monitor the terrorized tenants issue in 1995.



# BLIGHTED AND DETERIORATED HOUSING

**C**ommission recommendations relating to HJR 489 address sales of tax-delinquent property, property tax liens, "homesteading" programs, and graffiti and property defacement.

## HOUSE JOINT RESOLUTION 489 Blighted and Deteriorated Housing

House Joint Resolution 489 (1993), patroned by Delegate Whittington W. Clement, requests the Virginia Housing Study Commission to study and recommend remedies to address the problems associated with blighted and deteriorated properties. Such structures and lots impair or arrest neighborhood development and revitalization, sometimes leading to an actual exodus of residents and businesses, and spreading blight to neighboring properties and communities.

The Virginia Housing Study Commission recommended landmark legislation, passed by the 1994 General Assembly, based on its 1993 HJR 489 study. Such legislation includes:

- House Bill 1204, reducing from two years to 90 days the time period during which lienors must enter claims following a locality's publication of its notice of intent to acquire tax delinquent property
- House Bill 1205, allowing housing authorities to address individual blighted properties outside designated conservation districts. (This legislation, passed unanimously by the General Assembly but vetoed by the Governor, subsequently passed again in an altered form during a 1994 Special General Assembly Session and was approved by the Governor.)
- House Bill 1206, allowing localities to control grass and weeds on vacant lots as well as on property on which buildings are located
- House Bill 1238, authorizing localities to inspect residential buildings in conservation districts when tenancy changes.

In addition, in promulgating the 1994 edition of the Building Maintenance Code, the Board of Housing and Community Development incorporated language permitting the local building official to declare a structure a public nuisance in order to secure compliance with code provisions regarding threats to life, health, and safety. The Board also empowered the local code official to seek the razing or removal of a structure deemed a public nuisance.

Following are additional Commission recommendations pursuant to HJR 489, which recommendations stem from the Commission's second year of study on the important issue of blighted properties.

### Time Period Required to Initiate Sale of Tax-Delinquent Property

Under current Virginia law, a locality may not initiate a sale of tax-delinquent property to satisfy tax liens until three years following December 31 of the year taxes were originally due. The Commission discussed amending § 58.1-3965 of the Virginia Code to decrease the three year period to no less than two years for tax delinquent property located in conservation areas (i.e., deteriorating neighborhoods or areas

*The Commission recommends authorizing localities to issue local tax credits to stimulate the purchase and redevelopment of tax-delinquent properties.*

that the local governing body has designated for increased development and redevelopment efforts). The Commission will continue its study of this issue in 1995.

### **Clarification of Initiation of a Tax-Delinquent Property Sale**

Section 58.1-3965 of the Virginia *Code* specifies that notice of a tax-delinquent property sale is to be sent to the property owner "at least thirty days prior to instituting any action" pursuant to selling the property. Several localities have indicated that some property owners receive this "advanced" notice and pay a portion of their delinquent tax (usually one year) to prevent the locality from proceeding with the sale. Such payment results in properties remaining at least two to three years tax delinquent indefinitely. Current *Code* language is not clear as to when tax sale proceedings actually begin.

The Commission recommends amending § 58.1-3965 to clarify that once notice has been sent to the property owner and the tax sale proceeding has been initiated, the owner may terminate such proceeding at any time prior to the date of sale by paying all accumulated taxes, penalties, interest, and costs, including attorney's fees and other such costs as a locality may have incurred in the process of initiating the tax sale. The Commission also recommends that the owner should be allowed to terminate a tax sale prior to the date of such sale by entering into a written agreement with the locality to pay all accumulated taxes, penalties, interest, and costs. Such agreement would constitute an installment note which would be recorded as a third lien on the subject property.

### **Registration of Landlords or Their Resident Agents**

Localities have advised the Commission that some absentee landlords who fail to maintain properties, thus allowing their slide into decay and deterioration, use post office box addresses to avoid providing an identifiable street address for purposes of service of process. To address this frustrating and ultimately negative situation, the Commission recommends requiring that Virginia taxation records for real property include a registration of the property owner and such owner's identifiable street address. Such address would be the address to which all official notices pursuant to the property would be delivered. If an identifiable street address were so registered, the appropriate party could be served with notification of property-related matters even if the last-named owner were deceased and/or his successor(s) in interest unknown, e.g., multiple unknown heirs. Such registration requirement pursuant to property records would be analogous to the current State Corporation Commission requirement for a corporate owner's identity and address pursuant to subject business communications.

## **Property Tax Liens on Blighted and Deteriorated Structures**

Section 58.1-3344 of the Virginia *Code* provides that unpaid property tax shall be a lien on the property and the party listed as owner shall be liable for the payment of taxes. When property is sold, the purchaser becomes responsible for any property tax liens. Because tax liens on abandoned or deteriorated property may approach or exceed the assessed or fair market value of the property, potential purchasers may in turn be discouraged from investing in such real estate.

The Commission recommends authorizing localities to issue local tax credits pursuant to programs such localities may adopt to ameliorate the above-stated property tax lien situation. The locality would make specific findings and adopt specific policies and procedures related to any such tax credit/lien abatement program, and publicize the same as to qualifying neighborhoods or properties. Such tax credit program could effectively serve to stimulate rehabilitation of blighted properties and neighborhoods.

## **Urban Homesteading Programs**

In an effort to redevelop neighborhoods plagued by urban blight, several cities in the United States have enacted "urban homesteading" ordinances, the modern analogue to the original Homesteading Act of 1862. Under such ordinances, private citizens take temporary possession of abandoned structures owned by the city, make improvements on them while living in or otherwise using them, and then acquire title from the city either for a nominal fee or for the value of the structure before improvements. This response to structural abandonment gained popularity during the 1970s and is now a key component of several urban renewal strategies, primarily in several larger northeastern cities. Such programs, however, may require significant amounts of staff time, technical assistance, and long-term oversight.

In Virginia, alternative kinds of "homesteading" programs have been developed in urban communities. For example, in Richmond, the local housing authority acquires and rehabilitates property within designated, low-income "conservation" areas. Various financing sources, including Community Development Block Grant (CDBG) funds, are used to rehabilitate the property acquired. After rehabilitation, the property is sold at appraised value to a low-income purchaser and a loan repayment schedule is designed to meet the monthly payment ability of the purchaser. Monthly payments are often lower than rent payments would be for housing in the area. The Richmond program targeted the rehabilitation and sale of twenty such properties in 1994.

Urban homesteading programs can serve as an important strategy to revitalize blighted and deteriorated neighborhoods. Currently, § 36-19 of the Virginia *Code* authorizes only localities with a redevelopment and housing authority to implement such homesteading programs and other "experiments" in housing. Therefore, the Commission recommends that the *Code* be amended to enable all Virginia localities to initiate homesteading programs and other housing "experiments." The Commission also notes that there are few sources of financing available to implement housing rehabilitation related to homesteading programs,

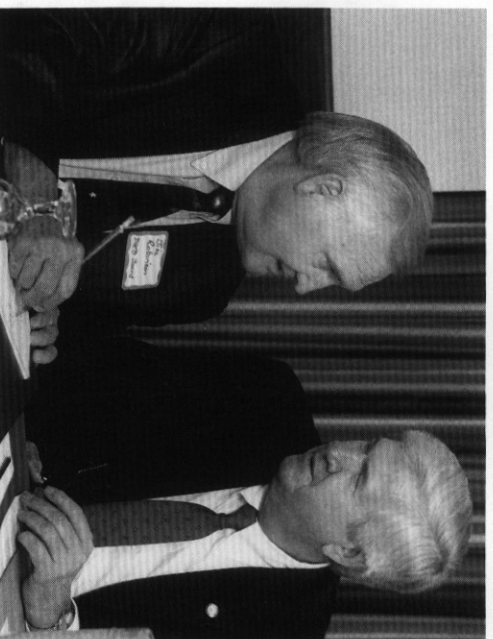


and recommends that funding be made available through the Virginia Housing Partnership Fund as well as the Virginia Housing Development Authority Virginia Housing Fund.

### **Local Control of Graffiti and Property Defacement**

Although vandalism of a single property or structure can have a significant negative economic and environmental impact on an entire neighborhood, localities are limited in their ability to address directly the often long-term impact of existing graffiti and defaced property. Currently, local governments are somewhat limited in their ability to address directly the impact of existing graffiti and defaced property, and several Virginia localities have requested authority to control the problem in a more effective manner. Increased police efforts to reduce graffiti have been moderately successful in some neighborhoods, and voluntary agreements with property owners to have graffiti removed at public expense have been used in others.

The Commission has been advised that graffiti can be used to mark turf and identify gang-related activity, and that in controlling and eliminating such activity time is of the essence. Some localities have noted that communication with owners to secure their consent to enter their property and remove the offending graffiti can be problematic as to time involved. The Commission therefore recommends legislation that would authorize local governments to continue to remove graffiti on private property at public expense where the locality has secured the written permission of the property owner to undertake the same. In situations where the locality has been unable to obtain written consent, the Commission recommends authorizing localities to proceed to seek permission to remove graffiti on the grounds that it is a public nuisance, and to remove the graffiti at public expense after securing permission through the judicial process.



COMMISSION MEMBER CHARLES L. WADDELL (RIGHT)  
WITH JAMES W. ROBINSON, IMMEDIATE PAST CHAIRMAN OF  
THE BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

# HOUSING FINANCE ISSUES

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**C**ommission 1994 housing  
finance issues include housing  
density bonuses for transit

*projects, limited priority liens, home equity  
lending practices, and water/sewer  
connection fees.*

## **SENATE BILL 97** **Housing Density Bonuses for Transit Projects**

Senate Bill 97, patroned by Senator Charles L. Waddell, would authorize localities to provide affordable housing density bonuses for public transit projects. The bill was carried over to the 1995 General Assembly Session and re-referred to the Housing Study Commission for further study prior to the Session. The Commission recommended a Substitute to Senate Bill 97, which bill would amend § 15.1-491.2 of the Virginia Code to provide that a developer, on his own initiative, could proffer a cost contribution, dedication of real or personal property, and construction of improvements in furtherance of transportation services and facilities, in areas designated in a local comprehensive plan as eligible for density increases, provided that the governing body grants the owner an additional increase in density to which the owner agrees. Acting on the Commission's recommendations, the Senate Committee on Local Government has subsequently referred SB 97 to the Senate Floor for consideration.

## **SENATE BILLS 266 AND 267** **Limited Priority Liens and Nonjudicial Foreclosures**

Senate Bills 266 and 267, patroned by Senator Robert L. Calhoun, were carried over to the 1995 General Assembly Session with the request that the Commission work with parties interested in the bills prior to such Session. The bills would grant a lien priority for unpaid assessments of condominium unit and property owners associations during the six months immediately preceding the perfection of the lien. Further, the bills would set forth procedure to provide for nonjudicial foreclosure of an assessment lien. Representatives of condominium unit and property owners associations and representatives of the lending industry agreed at Commission meetings to work together to address the nonjudicial foreclosure provisions of the bills. However, there remain a number of lending industry concerns regarding limited priority liens.

## **HOME EQUITY LENDING PRACTICES**

Since the deregulation of the consumer credit industry and the rapid inflation in property values during the 1980's, financiers have experienced a strong market in equity-secured lending. Today, home improvement loans are predominantly secured by the borrower's home, and lenders have moved aggressively into the home equity-secured lending market.





COMMISSION MEMBER WALTER J. PARKER

The issue of usurious interest rates charged for home repairs to low-income homeowners was presented at a 1993 Virginia Housing Study Commission public hearing. Commission member Delegate Lewis W. Parker, Jr., then Chairman of the House Committee on Corporations, Insurance, and Banking, later researched the issue and suggested that the Commission in 1994 focus further study on disclosure-related language which could be used to amend the Virginia Mortgage Lender and Broker Act.

## Virginia Law and Home Equity Lending

Virginia's banking laws generally place no restrictions on mortgage interest rates. An exception is second mortgage loans with compound interest features, which are capped at eighteen percent per annum. Additionally, mortgage processing fees including points, survey fees, appraisal fees, and other charges are generally unrestricted. Only a prepayment penalty for mortgage loans on a home occupied or to be occupied by the borrower is limited—at two percent of the amount of prepayment—by Virginia Code § 6.1-330.83.

The Mortgage Lender and Broker Act (Virginia Code §§ 6.1-408 et seq.) was enacted in 1987 to provide State Corporation Commission (SCC) oversight of persons regularly engaged in placing or funding mortgage loans (brokers) and those originating such loans (lenders). The Act also lists prohibited practices, such as delaying the closing of a mortgage loan for the purpose of increasing interest, costs, fees, or charges, or including any acceleration clause other than for failure to make timely payments.

## Federal Law and Home Equity Lending

The 1968 Truth-in-Lending Act was promulgated to achieve three basic goals:

- stabilize the economy by increasing the informed use of credit
- enable consumers to shop for the most favorable credit terms
- protect consumers against inaccurate and unfair lending practices.

To achieve these goals, the Act requires that creditors disclose the annual percentage rate on all consumer lending. This rate is computed by expressing the yearly interest on the loan, together with all other charges "incident to the extension of credit," as a percentage of the average balance. Proponents of the legislation expected that disclosure of this rate would provide a single "yardstick" that would facilitate comparisons between different credit offerings and generally familiarize consumers with the cost of credit.

In addition to the Truth-in-Lending Act, the Community Reinvestment Act, the Home Mortgage Disclosure Act, and other federal regulations enacted in recent years have attempted to prompt traditional lenders to increase credit availability in low-income areas. Most recently, the Community Development Banking Act (H. R. 3474) passed Congress in August 1994 and was forwarded to the White House for the President's signature. The bill, designed to protect consumers who incur debt secured by their home,

targets home improvement loans and other credit transactions that have been abused under home equity lending programs. Traditional residential mortgage lending would not be affected by the legislation.

The Community Development Banking Act specifically addresses "high cost mortgages," defined as consumer credit transactions, other than residential mortgage transactions, secured by a consumer's principal dwelling. To be considered a high cost mortgage, a residential lending transaction also must satisfy at least one of the following conditions:

- The annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the rate of interest on obligations of the United States having a period of maturity of one year on the fifteenth day of the month before such consummation.
- All points and fees payable by the consumer at or before closing will exceed the greater of eight percent of the amount financed, minus fees and points; or \$400.00.

Any high cost mortgage must include disclosures in a separate document, including the following statement:

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Other mandatory disclosures in the separate document include information on the interest rate, the total monthly cost to the consumer, a statement that the consumer is not required to complete the transaction just because a loan application has been signed, and a statement that a less expensive loan may be available.

Under the Act, the above-stated disclosures would be given to the borrower at least three days prior to the consummation of the loan transaction. The Act would further allow the borrower to rescind any agreement consummated under unfair, deceptive, or evasive acts, including those in which a lender "takes advantage of the borrower's infirmities, lack of education or sophistication, or language skills, necessary to understand fully the terms of the transaction."

### **Community Development Banking Act in Virginia**

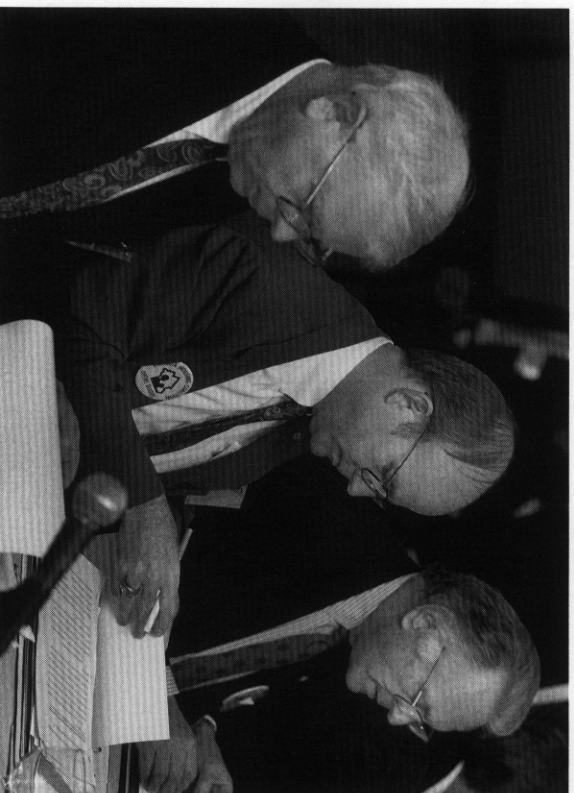
At a 1994 Housing Study Commission Subcommittee meeting addressing the issue of usurious home equity lending rates, members initially considered proposing legislation which would amend the Virginia Mortgage Lender and Broker Act to include provisions, relating to high cost mortgages, found in proposed federal H. R. 3474. However, Subcommittee members and subsequently the Commission agreed that national legislation (which had been introduced in Congress and had moved rapidly through Congressional committees since the time the Commission had begun its work on the issue of usurious home equity lending rates) would be preferable to legislation enacted in Virginia. The Commission agreed that, prior to making further recommendations on the issue, the effect of the federal legislation should be monitored through the State Corporation Commission, and a report on the same presented to the Commission.

## WATER AND SEWER CONNECTION FEES

Recent independent studies by the Homebuilders Association of Virginia, and by the Virginia Department of Housing and Community Development at the request of the Housing Study Commission, pursuant to local water and sewer connection fees in the Commonwealth reach the same conclusion: that the *Code of Virginia* offers little specific guidance as to rates, fees, and charges to localities or authorities providing water and sewer facilities.

Although local governments and authorities are authorized to fix, charge, and collect fees for water and sewer services, the laws governing these charges are vague and offer little guidance to local governments in establishing such fees and charges. Section 15.1-1260 of the *Code* provides localities the authority to fix and impose charges for water and sewer services. These charges are meant to provide funds to pay the cost of maintaining, repairing, and operating the system; pay the principle and interest on revenue bonds; and provide a margin of safety to make such payments. According to this *Code* section, rates, fees, and charges must be "just and equitable." *Code* § 15.1-1261 specifies that a locality may fix and establish a connection fee "in a reasonable amount."

No guidance is offered in existing statutes as to the determination of a "reasonable amount." And, according to a recent Draper Aden Associates report, while the average water connection fee statewide is nearly \$1,600 and the average sewer connection fee statewide about \$2,500, some Virginia counties charge as much as \$7,000 for the two connection services. Such wide discrepancy has led critics to charge that certain counties are "abusing" such fees, and inflating them for other uses.



COMMISSION MEMBERS (LEFT TO RIGHT)  
BOB CALHOUN, JIM ALWAND, AND  
ALAN DIAMONSTEIN



*Concerns have been raised that Virginia subdivision street standards are excessive and effectively serve as a regulatory barrier to affordable housing.*

The Commission is of the opinion that water and sewer connection fees established by any county, city, town, authority, or sanitary district must be fair and reasonable and bear a substantial relationship to the allowable costs of providing the individual service. Accordingly, the Commission recommends legislation that would amend appropriate sections of Title 15.1 of the *Code and Code* §§ 21-118.4(c) and 21.118.5 to provide more direction in establishing rates, fees, and charges for connection services.

Specifically, such legislation would mandate that connection fees include only the actual costs of installing the connection to the system, the allocable costs of administration for the installation, and the allocable capital costs of providing service to the new user. Further, local governments would be required to review water and sewer connection fees at least every three years and make adjustments, if necessary, to assure that fees to new users are fair and reasonable. In the event that existing water and sewer bond agreements provide for a specific method of determining the amount of connection fees which is in conflict with the proposed legislation, the bond documents shall control, and existing contracts will not be affected by the proposed legislation.

## **SUBDIVISION STREET STANDARDS**

Virginia homebuilders continue to raise concerns, as they have for a number of years, regarding the Virginia Department of Transportation (VDOT) subdivision street standards which, they assert, are excessive and effectively serve as a regulatory barrier to affordable housing. In recent years, the Housing Study Commission has requested that VDOT review such standards to ensure that they are not overly excessive. However, according to homebuilders, VDOT continues to mandate design standards appropriate for 50-mile per hour roads when in fact such standards are applicable to 25-mile per hour residential zones.

The Commission and the Department of Housing and Community Development are currently working together to convene meetings among legislators, state cabinet officials, agency personnel, and other interested parties to review VDOT subdivision street standards. It is anticipated that appropriate legislation and/or administrative remedies will be recommended and introduced in early 1995 to ensure that VDOT standards are not overly prescriptive.

## **HOUSE JOINT RESOLUTION 192 Regulatory Barriers to Affordable Housing**

House Joint Resolution 192, patroned by Delegate Roger J. McClure, requests the Secretary of Commerce and Trade to review regulatory barriers to affordable housing, and to submit the results of such study to the Virginia Housing Study Commission for review and comment.

*Comprehensive information has now been assembled on the characteristics, accomplishments, and challenges of nonprofit housing groups in the Commonwealth.*

The Report submitted to the Commission includes a number of important recommendations of interest to affordable housing advocates, and legislation will likely be forthcoming on several related issues, including:

- amending Virginia Code § 15.1-430 to provide a uniform definition of "affordable housing"
- amending House Bill 1235 relating to the Virginia Housing Development Authority "60-day letter" to ensure that localities do not arbitrarily and capriciously reject a multifamily housing project financed by VHDA.

The Commission commends the Report, available through the Department of Housing and Community Development, for review. The Commission further recommends that an HJR 192 implementation team be appointed to monitor progress made in implementing recommendations included in the Secretary's Report.

## **SURVEY OF NONPROFIT HOUSING ORGANIZATIONS**

The growth and importance of nonprofit housing organizations are well recognized throughout the Commonwealth; nonetheless, little information has been assembled on their characteristics, their accomplishments, and the challenges they face in achieving their mission. At the request of the Virginia Housing Study Commission, the Virginia Center for Housing Research, under the directorship of Dr. C. Theodore Koebel, recently conducted a survey of some fifty nonprofit housing groups. The survey was undertaken to gather basic data, to be used in developing state housing policy recommendations, about such organizations.

Participating survey organizations were also invited to attend a "summit" of Virginia nonprofit housing groups. The three-day summit, convened in September and characterized as an overwhelming success by participants, was sponsored jointly by the Commission, DHCD, VHDA, and the Local Initiatives Support Corporation (LISC). Organizations invited to participate in the survey and summit were selected to reflect the diversity of such nonprofits and include housing producers and/or managers (grouped according to size); community/neighborhood development organizations; organizations focusing on housing for those with special needs; and service specialists.

Following are preliminary key findings derived from survey responses from 34 participating organizations:

- Approximately 2,200 units were produced, rehabbed, or repaired annually (1992-1994).
- 30,000 people were served annually.
- The median total budget for FY94/95 was \$800,000, with a range of \$152,000 to \$9.235 million.
- Twenty percent of respondents described their organization's financial stability as "excellent," half as "fairly stable," twenty percent as "somewhat unstable," and ten percent as "very unstable."
- A wide range of services is provided, including single family development or rehab, housing counseling, repairs, indoor plumbing, technical assistance, housing information and referral, multifamily development or rehab, property management, weatherization, shelter development and operation, special needs housing development and operation, and homeless prevention.
- The typical nonprofit housing organization in Virginia consists of an executive director and three to four program staff members. The average board of directors for such organization consists of 18 positions, six of which are filled by neighborhood or low-income representatives.

The Commission commends the survey results, available through the Center, for review.

# VIRGINIA HOUSING STUDY COMMISSION 1994 SUBCOMMITTEES

<b>HB 501 and HB 1381: Removal Bonds and "Terrorized Tenants"</b>		<b>HJR 241 and HJR 251: Health and Safety Issues Relating to Residential Rental Units</b>		<b>Patricia M. Hamrahan, Esquire</b> Director American Bar Association Commission on Homelessness and Poverty Washington, D. C.	
The Honorable James F. Almand, Chairman Virginia House of Delegates Arlington	The Honorable James F. Almand, Chairman Virginia House of Delegates Arlington	The Honorable James F. Almand, Chairman Virginia House of Delegates Arlington	The Honorable Robert L. Calhoun Virginia State Senate Alexandria	Mr. Thomas R. Hyland Director of Governmental Affairs Apartment and Office Building Association of Metropolitan Washington, D. C.	Mr. David J. Brown Executive Director Preservation Alliance of Virginia Staunton
The Honorable Flora D. Crittenden Virginia House of Delegates Newport News	The Honorable Robert L. Calhoun Virginia State Senate Alexandria	Mr. Scott E. Huch The Delta Group, Inc. Alexandria	Mr. Theodore Koebel Director Virginia Center for Housing Research Blacksburg	Mr. Michael Amys Executive Director Virginia Municipal League Richmond	Mr. Dan Pollock Housing Development Coordinator City of Roanoke Housing Development Office Roanoke
Michael G. Allen, Esquire Legal Services of Northern Virginia Falls Church	The Honorable Clinton Miller Virginia House of Delegates Woodstock	Mr. Thomas R. Hyland Director of Governmental Affairs Apartment and Office Building Association of Metropolitan Washington, D. C.	Dr. C. Theodore Koebel Director Virginia Center for Housing Research Blacksburg	Mr. Stephen D. Haner Legislative Director Virginia Association of Realtors Glen Allen	Ms. Mary Reed President Urban League of Hampton Roads, Inc. Norfolk
Bryan Grimes (Creasy), Esquire Mays & Valentine Richmond	The Honorable William C. Mims Virginia House of Delegates Leeburg	Mr. Michael Amys Executive Director Virginia Municipal League Richmond	Ms. Barbara R. Eutbank Executive Director Virginia Apartment and Management Association Richmond	Mr. J. M. Henderson Fire Prevention Officer Newport News Police Department Newport News	Ms. Kathy Shearer HOME Rehabilitation Coordinator People, Inc. Abingdon
Ms. Barbara R. Eutbank Executive Director Virginia Apartment and Management Association Richmond	The Honorable Jackie T. Stump Virginia House of Delegates Oakwood	Mr. Theodore Koebel Director Virginia Center for Housing Research Blacksburg	Mr. Richard C. Genury Executive Director Richmond Redevelopment and Housing Authority Richmond	Mr. A. Ray Griffin, Jr. City Manager City of Danville Danville	Ms. Wynne Spain Past President Virginia Association of Neighborhoods Richmond
Mr. Richard C. Genury Executive Director Richmond Redevelopment and Housing Authority Richmond	Michael G. Allen, Esquire Legal Services of Northern Virginia Falls Church	Evan G. Lewis, Esquire Virginia Poverty Law Center Richmond	Ms. Colleen Wagner Planner Virginia Water Project, Inc. Roanoke	Mr. Stephen D. Haner Legislative Director Virginia Association of Realtors Glen Allen	<b>SB 97: Housing Density Bonuses for Transit Projects</b>
Mr. Stephen D. Haner Legislative Director Virginia Association of Realtors Glen Allen	Mr. Claude G. Cooper Building Commissioner City of Richmond Department of Permits and Inspection Richmond	Ms. Sherman C. Edmondson, CPCA Assistant Director Norfolk Department of City Planning and Codes Administration Norfolk	Mr. Richard C. Genury Executive Director Richmond Redevelopment and Housing Authority Richmond	Mr. James D. Campbell Executive Director Virginia Association of Counties Richmond	The Honorable Charles L. Waddell, Chairman Virginia State Senate Leeburg
Patricia M. Hamrahan, Esquire Director American Bar Association Commission on Homelessness and Poverty Washington, D. C.	Ms. Sherman C. Edmondson, CPCA Assistant Director Norfolk Department of City Planning and Codes Administration Norfolk	The Honorable Stanley C. Walker, Chairman Virginia State Senate Alexandria	Mr. J. M. Henderson Fire Prevention Officer Newport News Police Department Newport News	Ms. Mary Jo Fields Legislative Coordinator Virginia Municipal League Richmond	The Honorable William C. Mims Virginia House of Delegates Leeburg
Mr. Thomas R. Hyland Director of Governmental Affairs Apartment and Office Building Association of Metropolitan Washington, D. C.	Ms. Barbara R. Eutbank Executive Director Virginia Apartment and Management Association Richmond	The Honorable Charles L. Waddell Virginia State Senate Leeburg	Mr. Thomas R. Hyland Director of Governmental Affairs Apartment and Office Building Association of Metropolitan Washington, D. C.	Lee Fifer, Jr., Esquire McGuire, Woods, Battle & Boothe McLean	Ms. Judith S. Booe Past President AHOME Front Royal
Evan G. Lewis, Esquire Virginia Poverty Law Center Richmond	Ms. Lou Ann Frederick Executive Director Arlington Housing Corporation Arlington	Mr. Michael Amys Executive Director Virginia Municipal League Richmond	Mr. Neal J. Barber Project Director The Urban Partnership Virginia Chamber of Commerce Richmond	Ms. Natalie D. Grigg Legislative Coordinator Homebuilders Association of Virginia Richmond	



<p>Karen Harwood, Esquire Senior Assistant County Attorney Fairfax County Attorney's Office Fairfax</p> <p>Mr. Thomas R. Hyland Director of Governmental Affairs Apartment and Office Building Association of Metropolitan Washington Washington, D. C.</p> <p>Scott McGarry, Esquire Deputy CEO/General Counsel Northern Virginia Building Industries Association Fairfax</p> <p>Mr. John H. Rocca Board of Commissioners Virginia Housing Development Authority Leesburg</p> <p>Dr. Mary Lynn Tischer Administrator Office of Policy Analysis Virginia Department of Transportation Richmond</p> <p><b>SB 266 and SB 267: Limited Priority Liens and Nonjudicial Foreclosures</b></p> <p>The Honorable James F. Almand, Chairman Virginia House of Delegates Arlington</p> <p>The Honorable Robert L. Calhoun Virginia State Senate Alexandria</p> <p>The Honorable Ralph L. Asselle, Jr. Counsel to Virginia Mortgage Bankers Association Williams, Mullen, Christian &amp; Dobbins Glen Allen</p> <p>Mr. Bradford J. Brady Community Group, Inc. Glen Allen</p> <p>Robert M. Diamond, Esquire Hazel &amp; Thomas, P.C. Falls Church</p> <p>S. Miles Dunnville, Esquire Counsel to Virginia League of Savings Institutions Hazel &amp; Thomas, P.C. Richmond</p>	<p>Mr. Stephen D. Haner Legislative Director Virginia Association of Realtors Glen Allen</p> <p>David S. Mercer, Esquire Mays &amp; Valentine Alexandria</p> <p>Mr. William P. Norman President Legum &amp; Norman, Inc. McLean</p> <p>Ms. Patricia G. Satterfield Executive Director Virginia Association of Community Banks Richmond</p> <p>Joseph E. Sprull, III, Esquire Legal Counsel Virginia Bankers Association Richmond</p> <p>Mr. Michael L. Toalson Senior Vice President Virginia Bankers Association Richmond</p> <p>Lucia Anna Triggiani, Attorney at Law Mays &amp; Valentine Alexandria</p> <p>The Honorable Robert E. Washington Deputy Executive Director Virginia Housing Development Authority Richmond</p> <p><b>Home Equity Lending Practices Relating to Home Repairs for Low-Income Homeowners</b></p> <p>The Honorable James F. Almand, Chairman Virginia House of Delegates Arlington</p> <p>Mr. Sidney A. Bailey Commissioner Virginia Bureau of Financial Institutions State Corporation Commission Richmond</p> <p>Mr. Kevin P. Byers Telamon Corporation Richmond</p>	<p>S. Miles Dunnville, Esquire Counsel to Virginia League of Savings Institutions Hazel &amp; Thomas, P.C. Richmond</p> <p>David Rubinstein, Esquire Executive Director Virginia Poverty Law Center Richmond</p> <p>Ms. Patricia G. Satterfield Executive Director Virginia Association of Community Banks Richmond</p> <p>Mr. Jeff D. Smith President Virginia Financial Services Administration Richmond</p> <p>Joseph E. Sprull, III, Esquire Legal Counsel Virginia Bankers Association Richmond</p> <p>Mr. Michael L. Toalson Senior Vice President Virginia Bankers Association Richmond</p>
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Photography: Taylor Dabney



*For more information,  
please contact:*

Executive Director  
**VIRGINIA HOUSING STUDY COMMISSION**  
601 South Belvidere Street  
Richmond, Virginia 23220  
(804) 225-3797